IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1073 of 2007

Kandan .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by the Secretary to Govt.,
   Home, Prohibition and Excise Dept.,
   St. George Fort, Chennai.

2. The District Magistrate
   and District Collector,
   Vellore District, Vellore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the Respondents to call for the records in C3.D.O.No.50/2007, dated 09.07.07 passed by the Second Respondent, approved and confirmed by the First Respondent set aside the same direct the Respondents to produce the body of this petitioner viz. Kandan who has been detained and confined in the Central Prison at Vellore in T.P.D.A.No.5180 before this Court set this detenue kandan at liberty as stated therein.

For Petitioner : Mr.T.R.Radhakrishnan

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

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ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who was incarcerated at Central Prison, Vellore, by an order dated 9.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention dated 9.7.2007 passed in C3.D.O.No.50/2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. On 22.6.2007, while conducting prohibition raid by the police attached to Vaniyambadi Town Circle, the detenu was found selling illicit arrack containing atropine of 6.7 mgms. as per chemical analysis report. A case was registered in Crime No.320/2007 on the file of Ambalur Police Station for offences punishable under Section 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act read with Section 328 I.P.C. The detenu was arrested and produced before the District Munsif cum Judicial Magistrate, Vaniyambadi, for judicial remand.

3. The second respondent, taking note of the above case as a ground case and finding that there are seven adverse cases of alike nature on the file of same police station in Crime Nos.24/2006, 117/2006, 126/2006, 163/2006, 249/2006, 307/2006 and 14/2007, ordered his detention dubbing him as a bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in sending the remarks to the Government.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

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5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the case on hand, admittedly, objecting to the order of detention dated 9.7.2007, a representation was made on behalf of the detenu on 23.7.2007, which was received by the Government on 25.7.2007. Remarks were called for from the detaining authority on 26.7.2007, who, in turn, called for parawar remarks from the sponsoring authority on 1.8.2007 and on receipt of the same by the detaining authority on the same day, it was sent to the Government only on 10.8.2007, after a delay of nine days, which is unexplained. The Government received remarks on 16.8.2007 and thereafter, the file was submitted on 20.8.2007. The Under Secretary and the Additional Secretary considered the file on 21.8.2007 and 22.8.2007 respectively and the Minister concerned dealt with the file on 23.8.2007

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and rejected the same. The rejection letter was prepared on 24.8.2007, it was sent to the detenu on 25.8.2007 and served on the detenu on 30.8.2007. Even taking note of the intervening holidays, viz. 4.8.2007 and 5.8.2007 (being Saturday and Sunday), the delay of five days in sending the remarks to the Government by the detaining authority is unexplained and inexcusable.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of five days on the part of the detaining authority in sending the remarks to the Government, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government
   of Tamil Nadu, Home, Prohibition and
   Excise Department, Fort St. George,
   Chennai 600 009.

2. The District Magistrate
   and District Collector
   Vellore District, Vellore.

3. The Superintendent
   Central Prison, Vellore.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order)
   Fort Saint George, Chennai-9.

ASM(CO)
dcp/22.11

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